

**HISTORIC PRESERVATION AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill enacts provisions of the Municipal Land Use Development and Management Act related to historic preservation.

**Highlighted Provisions:**

This bill:

- ▶ defines "historic preservation commission";
- ▶ authorizes a legislative body to designate a historic preservation commission to make administrative decisions on land use applications related to historically significant real property;
- ▶ under certain circumstances provides an automatic appeal from a decision of a historic preservation commission; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-9a-103**, as last amended by Laws of Utah 2015, Chapter 327

**10-9a-701**, as last amended by Laws of Utah 2011, Chapter 92

**10-9a-703**, as last amended by Laws of Utah 2008, Chapter 326

**10-9a-707**, as enacted by Laws of Utah 2005, Chapter 254

ENACTS:

**10-9a-527**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **10-9a-103** is amended to read:

**10-9a-103. Definitions.**

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, property owner, property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) (a) "Charter school" means:

(i) an operating charter school;

(ii) a charter school applicant that has its application approved by a charter school authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or

(iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(b) "Charter school" does not include a therapeutic school.

(5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(6) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

- (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or
- (b) Utah Constitution Article I, Section 22.

(7) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(8) "Development activity" means:

- (a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;
- (b) any change in use of a building or structure that creates additional demand and need for public facilities; or
- (c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include:

(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(A) not located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the purposes of a building described in Subsection (10)(a)(i); or  
(ii) a therapeutic school.

(11) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(12) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(13) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

(14) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(15) "Historic preservation commission" means a board, commission, or other body

126 designated by a legislative body to make administrative decisions on land use applications that  
127 affect historically significant real property.

128 ~~[(15)]~~ (16) "Hookup fee" means a fee for the installation and inspection of any pipe,  
129 line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or  
130 other utility system.

131 ~~[(16)]~~ (17) "Identical plans" means building plans submitted to a municipality that:

132 (a) are clearly marked as "identical plans";

133 (b) are substantially identical to building plans that were previously submitted to and  
134 reviewed and approved by the municipality; and

135 (c) describe a building that:

136 (i) is located on land zoned the same as the land on which the building described in the  
137 previously approved plans is located;

138 (ii) is subject to the same geological and meteorological conditions and the same law  
139 as the building described in the previously approved plans;

140 (iii) has a floor plan identical to the building plan previously submitted to and reviewed  
141 and approved by the municipality; and

142 (iv) does not require any additional engineering or analysis.

143 ~~[(17)]~~ (18) "Impact fee" means a payment of money imposed under Title 11, Chapter  
144 36a, Impact Fees Act.

145 ~~[(18)]~~ (19) "Improvement completion assurance" means a surety bond, letter of credit,  
146 financial institution bond, cash, assignment of rights, lien, or other equivalent security required  
147 by a municipality to guaranty the proper completion of landscaping or an infrastructure  
148 improvement required as a condition precedent to:

149 (a) recording a subdivision plat; or

150 (b) development of a commercial, industrial, mixed use, or multifamily project.

151 ~~[(19)]~~ (20) "Improvement warranty" means an applicant's unconditional warranty that  
152 the applicant's installed and accepted landscaping or infrastructure improvement:

153 (a) complies with the municipality's written standards for design, materials, and  
154 workmanship; and

155 (b) will not fail in any material respect, as a result of poor workmanship or materials,  
156 within the improvement warranty period.

157           ~~[(20)]~~ (21) "Improvement warranty period" means a period:

158           (a) no later than one year after a municipality's acceptance of required landscaping; or

159           (b) no later than one year after a municipality's acceptance of required infrastructure,

160 unless the municipality:

161           (i) determines for good cause that a one-year period would be inadequate to protect the  
162 public health, safety, and welfare; and

163           (ii) has substantial evidence, on record:

164           (A) of prior poor performance by the applicant; or

165           (B) that the area upon which the infrastructure will be constructed contains suspect soil  
166 and the municipality has not otherwise required the applicant to mitigate the suspect soil.

167           ~~[(21)]~~ (22) "Infrastructure improvement" means permanent infrastructure that an  
168 applicant must install:

169           (a) pursuant to published installation and inspection specifications for public  
170 improvements; and

171           (b) as a condition of:

172           (i) recording a subdivision plat; or

173           (ii) development of a commercial, industrial, mixed use, condominium, or multifamily  
174 project.

175           ~~[(22)]~~ (23) "Internal lot restriction" means a platted note, platted demarcation, or  
176 platted designation that:

177           (a) runs with the land; and

178           (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on  
179 the plat; or

180           (ii) designates a development condition that is enclosed within the perimeter of a lot  
181 described on the plat.

182           ~~[(23)]~~ (24) "Land use application" means an application required by a municipality's  
183 land use ordinance.

184           ~~[(24)]~~ (25) "Land use authority" means:

185           (a) a person, board, commission, agency, or body, including the local legislative body,  
186 designated by the local legislative body to act upon a land use application; or

187           (b) if the local legislative body has not designated a person, board, commission,

188 agency, or body, the local legislative body.

189 ~~[(25)]~~ (26) "Land use ordinance" means a planning, zoning, development, or  
190 subdivision ordinance of the municipality, but does not include the general plan.

191 ~~[(26)]~~ (27) "Land use permit" means a permit issued by a land use authority.

192 ~~[(27)]~~ (28) "Legislative body" means the municipal council.

193 ~~[(28)]~~ (29) "Local district" means an entity under Title 17B, Limited Purpose Local  
194 Government Entities - Local Districts, and any other governmental or quasi-governmental  
195 entity that is not a county, municipality, school district, or the state.

196 ~~[(29)]~~ (30) "Lot line adjustment" means the relocation of the property boundary line in  
197 a subdivision between two adjoining lots with the consent of the owners of record.

198 ~~[(30)]~~ (31) "Moderate income housing" means housing occupied or reserved for  
199 occupancy by households with a gross household income equal to or less than 80% of the  
200 median gross income for households of the same size in the county in which the city is located.

201 ~~[(31)]~~ (32) "Nominal fee" means a fee that reasonably reimburses a municipality only  
202 for time spent and expenses incurred in:

203 (a) verifying that building plans are identical plans; and

204 (b) reviewing and approving those minor aspects of identical plans that differ from the  
205 previously reviewed and approved building plans.

206 ~~[(32)]~~ (33) "Noncomplying structure" means a structure that:

207 (a) legally existed before its current land use designation; and

208 (b) because of one or more subsequent land use ordinance changes, does not conform  
209 to the setback, height restrictions, or other regulations, excluding those regulations, which  
210 govern the use of land.

211 ~~[(33)]~~ (34) "Nonconforming use" means a use of land that:

212 (a) legally existed before its current land use designation;

213 (b) has been maintained continuously since the time the land use ordinance governing  
214 the land changed; and

215 (c) because of one or more subsequent land use ordinance changes, does not conform  
216 to the regulations that now govern the use of the land.

217 ~~[(34)]~~ (35) "Official map" means a map drawn by municipal authorities and recorded in  
218 a county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the municipality's general plan.

~~[(35)]~~ (36) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(a) no additional parcel is created; and

(b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.

~~[(36)]~~ (37) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

~~[(37)]~~ (38) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the city;

(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the city's program to encourage an adequate supply of moderate income housing.

~~[(38)]~~ (39) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

~~[(39)]~~ (40) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but



250 presents the potential of geologic hazard because the area has characteristics similar to those of  
251 a designated geologic hazard area.

252 ~~[(40)]~~ (41) "Public agency" means:

253 (a) the federal government;

254 (b) the state;

255 (c) a county, municipality, school district, local district, special service district, or other  
256 political subdivision of the state; or

257 (d) a charter school.

258 ~~[(41)]~~ (42) "Public hearing" means a hearing at which members of the public are  
259 provided a reasonable opportunity to comment on the subject of the hearing.

260 ~~[(42)]~~ (43) "Public meeting" means a meeting that is required to be open to the public  
261 under Title 52, Chapter 4, Open and Public Meetings Act.

262 ~~[(43)]~~ (44) "Receiving zone" means an area of a municipality that the municipality  
263 designates, by ordinance, as an area in which an owner of land may receive a transferable  
264 development right.

265 ~~[(44)]~~ (45) "Record of survey map" means a map of a survey of land prepared in  
266 accordance with Section 17-23-17.

267 ~~[(45)]~~ (46) "Residential facility for persons with a disability" means a residence:

268 (a) in which more than one person with a disability resides; and

269 (b) (i) which is licensed or certified by the Department of Human Services under Title  
270 62A, Chapter 2, Licensure of Programs and Facilities; or

271 (ii) which is licensed or certified by the Department of Health under Title 26, Chapter  
272 21, Health Care Facility Licensing and Inspection Act.

273 ~~[(46)]~~ (47) "Rules of order and procedure" means a set of rules that govern and  
274 prescribe in a public meeting:

275 (a) parliamentary order and procedure;

276 (b) ethical behavior; and

277 (c) civil discourse.

278 ~~[(47)]~~ (48) "Sanitary sewer authority" means the department, agency, or public entity  
279 with responsibility to review and approve the feasibility of sanitary sewer services or onsite  
280 wastewater systems.

281           ~~[(48)]~~ (49) "Sending zone" means an area of a municipality that the municipality  
282 designates, by ordinance, as an area from which an owner of land may transfer a transferable  
283 development right.

284           ~~[(49)]~~ (50) "Specified public agency" means:

- 285           (a) the state;
- 286           (b) a school district; or
- 287           (c) a charter school.

288           ~~[(50)]~~ (51) "Specified public utility" means an electrical corporation, gas corporation,  
289 or telephone corporation, as those terms are defined in Section 54-2-1.

290           ~~[(51)]~~ (52) "State" includes any department, division, or agency of the state.

291           ~~[(52)]~~ (53) "Street" means a public right-of-way, including a highway, avenue,  
292 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,  
293 or other way.

294           ~~[(53)]~~ (54) (a) "Subdivision" means any land that is divided, resubdivided or proposed  
295 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the  
296 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
297 installment plan or upon any and all other plans, terms, and conditions.

298           (b) "Subdivision" includes:

- 299           (i) the division or development of land whether by deed, metes and bounds description,  
300 devise and testacy, map, plat, or other recorded instrument; and
- 301           (ii) except as provided in Subsection ~~[(53)]~~ (54)(c), divisions of land for residential and  
302 nonresidential uses, including land used or to be used for commercial, agricultural, and  
303 industrial purposes.

304           (c) "Subdivision" does not include:

- 305           (i) a bona fide division or partition of agricultural land for the purpose of joining one of  
306 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if  
307 neither the resulting combined parcel nor the parcel remaining from the division or partition  
308 violates an applicable land use ordinance;
- 309           (ii) a recorded agreement between owners of adjoining unsubdivided properties  
310 adjusting their mutual boundary if:  
311           (A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance;

(v) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels; or

(vi) a parcel boundary adjustment.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection [~~(53)~~] (54) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

[~~(54)~~] (55) "Suspect soil" means soil that has:

(a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;

(b) bedrock units with high shrink or swell susceptibility; or

(c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

[~~(55)~~] (56) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals who are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

~~[(56)]~~ (57) "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

~~[(57)]~~ (58) "Unincorporated" means the area outside of the incorporated area of a city or town.

~~[(58)]~~ (59) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

~~[(59)]~~ (60) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section **10-9a-527** is enacted to read:

**10-9a-527. Historic preservation.**

A legislative body may designate a historic preservation commission.

Section 3. Section **10-9a-701** is amended to read:

**10-9a-701. Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.**

(1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:

(a) requests for variances from the terms of the land use ordinances;

(b) appeals from decisions applying the land use ordinances; and

(c) appeals from a fee charged in accordance with Section 10-9a-510.

(2) Each municipality that designates a historic preservation commission shall, by

ordinance, establish an appeal authority that is comprised of one or more elected officials to hear and decide automatic appeals from decisions of the historic preservation commission described in Subsection 10-9a-703(3).

~~[(2)]~~ (3) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.

~~[(3)]~~ (4) An appeal authority:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

~~[(4)]~~ (5) By ordinance, a municipality may:

(a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;

(b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;

(c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;

(d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and

(e) provide that specified types of land use decisions may be appealed directly to the district court.

~~[(5)]~~ (6) If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:

(a) notify each of its members of any meeting or hearing of the board, body, or panel;

(b) provide each of its members with the same information and access to municipal resources as any other member;

(c) convene only if a quorum of its members is present; and

(d) act only upon the vote of a majority of its convened members.

Section 4. Section **10-9a-703** is amended to read:

**10-9a-703. Appealing a land use authority's decision -- Panel of experts for appeals of geologic hazard decisions -- Automatic appeal for certain decisions.**

(1) The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

(2) (a) An applicant who has appealed a decision of the land use authority administering or interpreting the municipality's geologic hazard ordinance may request the municipality to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

(b) If an applicant makes a request under Subsection (2)(a), the municipality shall assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the applicant and municipality:

(i) one expert designated by the municipality;

(ii) one expert designated by the applicant; and

(iii) one expert chosen jointly by the municipality's designated expert and the applicant's designated expert.

(c) A member of the panel assembled by the municipality under Subsection (2)(b) may not be associated with the application that is the subject of the appeal.

(d) The applicant shall pay:

(i) 1/2 of the cost of the panel; and

(ii) the municipality's published appeal fee.

(3) (a) Within 30 days after the day on which a historic preservation commission issues a decision on a land use application, the applicant shall indicate in writing to the historic preservation commission whether the applicant accepts or rejects the historic preservation commission's decision.

(b) If the applicant rejects the historic preservation commission's decision, the historic

preservation commission shall within five days after the day on which the historic preservation commission receives the written rejection, forward the rejection to the appeal authority described in Subsection 10-9a-701(2) for an automatic appeal of the decision.

Section 5. Section **10-9a-707** is amended to read:

**10-9a-707. Standard of review for appeals.**

(1) ~~[A]~~ Except as provided in Subsection (3), a municipality may, by ordinance, designate the standard of review for appeals of land use authority decisions.

(2) If the municipality fails to designate a standard of review of factual matters, the appeal authority shall review the matter de novo.

(3) An appeal authority established under Subsection 10-9a-701(2) to hear and decide appeals from a decision of a historic preservation commission shall review each appeal de novo.

~~[(3)]~~ (4) The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of a land use ordinance.

~~[(4)]~~ (5) Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.